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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,297

01/10/2006

Job Cornelis Oostveen

NL 030807

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04/01/2010

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

PICH, PONNOREAY

ART UNIT

PAPER NUMBER

2435

MAIL DATE

DELIVERY MODE

04/01/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/564,297	<b>Applicant(s)</b> OOSTVEEN ET AL.	
	<b>Examiner</b> Ponnoreay Pich	<b>Art Unit</b> 2435	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 and 15-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-14 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/10</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-4, 8-14, and 18-21 were examined.

#### ***Information Disclosure Statement***

The IDS submitted on 1/27/10 was considered.

#### ***Response to Amendment and Arguments***

Applicant's amendments were fully considered. Any objections or rejections not repeated for record are withdrawn due to applicant's amendments. Any new objections or rejections made were necessitated by applicant's amendments.

Applicant's arguments submitted on 1/26/10 were fully considered but are not all arguments were persuasive. Only the arguments which were not persuasive will be addressed.

With respect to claim 21, applicant argues that the amendment to "computer readable storage medium" in the preamble makes the claim statutory as a computer readable storage medium cannot be interpreted to encompass signals. The examiner respectfully disagrees. Information can still be stored in a signal by the encoding of the signal thus absent specific guidance in the specification as filed, "computer readable storage medium" can still reasonably be interpreted to refer to signals per se, which is not statutory.

Regarding the rejection of the claims under 35 USC 102, applicant sets forth four arguments for why the claims are not anticipated by Rhoads. However, the examiner respectfully submits that not only are applicant's arguments incorrect, they appear to be

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contrary to what is disclosed in the specification of the present application as originally filed.

Applicant first argues that Rhoads does not teach "providing at least one trigger time point and for each trigger time point providing at least one representation of at least one associated trigger action, where each trigger time point indicates a time point of the multimedia signal for which the at least one associated trigger action is available during playback of the multimedia signal". The basis of this argument is that although Rhoads discloses a fingerprint which may be represented in time, there is no suggestion of a trigger time point. Applicant argues that Rhoads's triggering method is based on the identification of a song, but not on trigger time points.

The examiner respectfully directs applicant to the paragraph spanning p3-4 of applicant's specification. In this paragraph, one can see that the fingerprint of applicant's invention serves as the trigger of an action associated with a particular point in time of the multimedia. From at least this portion of applicant's specification, one can see that as used in the current application, a trigger time point is merely some point in time associated with the media that some action can be trigger. Further, when that action is to be triggered is identified via use of a fingerprint. **Applicant's first argument with respect to Rhoads is entirely inconsistent with applicant's own specification.**

A multimedia file exists in Rhoads and has a time frame associated with it (paragraphs 14 and 21). Any point in time associated with Rhoads's multimedia file can be considered a trigger time point as a fingerprint can be used to trigger an action for the multimedia file at that particular point in time (paragraphs 21 and 27). The fingerprint

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itself is derived from applying a portion of the multimedia file represented as a unit time (paragraphs 14 and 21). Thus as discussed in paragraphs 21 and 27 of Rhoads, if a few seconds of an audio file is used to derive a fingerprint, at that few seconds mark (i.e. trigger time point), Rhoads's invention would detect the fingerprint and a number of responses will then be triggered.

Applicant's second argument with respect to Rhoads is that Rhoads does not teach "providing at least one representation of at least one associated trigger action, where each trigger time point indicates a time point of the multimedia signal for which the at least one associated trigger action is available during playback of the multimedia signal". The basis of this argument is that Rhoads does not disclose a trigger time point. However this argument has been addressed above already for argument one and will not be repeated. Applicant's argument and interpretation of the claims fail to even be consistent with applicant's own specification.

Applicant's third argument is that Rhoads does not teach "for each given trigger time point deriving a fingerprint on the basis of a segment of the multimedia signal, where the segment of the multimedia signal is associated with the given trigger time point". Again the examiner respectfully submits that applicant's argument appears to not even be consistent with applicant's own specification as originally filed. A trigger time point as defined by the specification appears to just be some point in time associated with the multimedia signal that some action can be triggered. In Rhoads's invention, a segment of the multimedia signal as represented by a unit time (i.e. chosen trigger time point) can be chosen to derive one or more fingerprints (paragraphs 14 and

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21). Various different responses can then be triggered by identification of the fingerprint (paragraph 27), thus the limitation is met.

Applicant's fourth argument with respect to Rhoads is that he does not teach "associating the derived fingerprint with at least one associated trigger action". The examiner respectfully disagrees. The fingerprint is used to identify a song and once identified using the fingerprint, various different responses can be triggered (paragraph 27), thus the limitation is met.

As the independent claims are not allowable over Rhoads's teachings, applicant's arguments for the dependent claims being allowable due to dependency are also traversed.

Applicant's holding of the double patenting rejection in abeyance is noted.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is directed towards a "computer readable storage medium". The specification fails to disclose what types of media are meant to be encompassed by "computer readable storage medium"; as such the metes and bounds of the claim cannot be determined.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 21 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 21 is directed towards a “computer readable storage medium”. The specification fails to disclose what types of media are meant to be encompassed by “computer readable storage medium”; as such, the term has been broadly, but reasonably interpreted to mean that it also encompasses signals. Note that signals do not fall within any of the four statutory categories of invention, thus claim 21 is not statutory. Note that applicant can overcome this rejection by instead claiming a “non-transitory computer readable storage medium”, which would exclude signals per se.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-14, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhoads et al (US 2002/0032864).

**Claims 1, 11, and 21:**

As per claim 1, Rhoads discloses a method comprising the steps of:

1. Providing at least one trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ) and for each trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ) providing at least one representation of least one associated trigger action, where each trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ) indicates a time point of the multimedia signal (101) for which the at least one associated trigger action is to be available during playback of the multimedia signal (paragraphs 14, 21, 27, and 30-33).
2. For each given trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ) deriving a fingerprint on the basis of a segment of the multimedia signal (101), where the segment of the multimedia signal is associated with the given trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ) (paragraphs 14 and 21).
3. Associating the derived fingerprint with the at least one associated trigger action (paragraphs 22 and 27).

Claims 11 and 21 are directed towards a device and computer readable medium respectively which implements the method of claim 1. Claims 11 and 21 are rejected for much the same reasons as claim 1.

**Claims 2 and 12:**

As per claim 2, Rhoads further discloses for each obtained trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ), storing the derived fingerprint and the at least one representation



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of the at least one associated trigger action in a first database (paragraphs 27 and 30-31).

Claim 12 is directed towards a device which implements the method of claim 2 and is rejected for much the same reasons.

**Claims 3 and 13:**

As per claim 3, Rhoads further discloses wherein the one or more derived fingerprints and/or the at least one representation of at least one associated trigger action for the multimedia signal is transmitted to a playback-device via the Internet or in a side-channel of a broadcast channel or via some other channel or means (paragraph 27).

Claim 13 is directed towards a device which implements the method of claim 3 and is rejected for much the same reasons.

**Claims 4 and 14:**

As per claim 4, Rhoads further discloses wherein the segment of the multimedia signal (101) is associated with the given trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ) according to: the segment of the multimedia signal (101) starting or ending at a predetermined distance before or after the given trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ), or the given trigger time point ( $T_{sub.n}$ ;  $T_{sub.n+1}$ ) being at a predetermined time point between a start and an end of the segment of the multimedia signal (101) (paragraphs 14 and 21).

Claim 14 is directed towards a device which implements the method of claim 4 and is rejected for much the same reasons.

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**Claims 8 and 18:**

Rhoads further discloses that said multimedia signal is an audio signal, a video signal or a combined audio/video signal (paragraph 27—i.e. a song is an audio signal).

**Claims 9 and 19:**

Rhoads further discloses wherein said at least one associated trigger action is selected from the group of: retrieving and displaying additional information on a display, retrieving and playing additional information via a speaker, playing another multimedia signal instead of said multimedia signal for a predetermined or variable period of time, stopping or pausing playing of said multimedia signal, executing other control commands, and preparing the system for user inputs (paragraph 27).

**Claims 10 and 20:**

Rhoads further discloses wherein the derived fingerprint and/or the fingerprint is stored in a second database and is an audio and/or video fingerprint (paragraphs 9, 14, 21, and 31).

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 11, 10, 20, 3, 13, 4, 14, 8, 18, and 21 are provisionally rejected on the ground of nonstatutory double patenting over claims 1, 15, 2, 16, 3, 17, 4, 18, 14, 28, and 29 respectively of copending Application No. 10/566,003. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The above claims of the '003 application are anticipated by the above claims of the current application

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ponnoreay Pich whose telephone number is (571) 272-7962. The examiner can normally be reached on 9:00am-4:30pm Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on 571-272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ponnoreay Pich/  
Primary Examiner, Art Unit 2435